

39. PAGE 89:21 TO 90:04 (RUNNING 00:00:19.400)

21 Q. Did you view these remarks as a
 22 threat against Mr. Yeager?
 23 A. Yes, I did.
 24 Q. When Mr. Yelles said to you, some
 00090:01 motherfucker should take this guy out, did you
 02 believe that Mr. Yelles was threatening
 03 Mr. Yeager with physical harm?
 04 A. I believe that could be a threat.

40. PAGE 90:05 TO 91:17 (RUNNING 00:01:30.900)

05 Q. Mr. Lusty, did you do anything --
 06 did you talk to anybody about this?
 07 A. I talked to my older brother about
 08 it.
 09 Q. Why did you talk to your older
 10 brother about it?
 11 A. Because we are very close and he is
 12 a couple years older and he has experienced some
 13 things in his life and we share experiences. And
 14 I think he has a pretty sound mind. He is a
 15 professional person and I think he can look at
 16 this thing objectively. And I ran that by him as
 17 to what I should do.
 18 I was very concerned that if I
 19 know something like that and I didn't do anything
 20 about it, where's my involvement in this. And I
 21 took that seriously.
 22 Q. I don't want to pry into your
 23 personal conversation with your brother. I am
 24 not trying to intrude there. I am just trying
 00091:01 to --
 02 A. I understand that.
 03 Q. I am just trying to find out what,
 04 if anything, you did after Mr. Yelles said this
 05 to you?
 06 A. I asked him if he thought I should
 07 go to the authorities. And I told him that I was
 08 going to meet with our legal team, which was
 09 Jeremy and the guys in Chicago. And that was not
 10 long after that, I believe. And he said you
 11 probably ought to wait and let them know what is
 12 going and just hope to hell nothing happens to
 13 Mr. Yeager in the meantime.
 14 Q. Is that -- I don't want to ask you
 15 about your conversations with Mr. Heep, but is
 16 that what you did?
 17 A. Yes.

41. PAGE 91:18 TO 92:09 (RUNNING 00:00:46.500)

18 Q. Now what was it that I see a
 19 reference to John McCafferty at the top and --
 20 did Mr. Yelles indicate to you what was it that
 21 had him so upset with Mr. Yeager during this
 22 call?
 23 A. Well, there was another deal here.
 24 There was a Strauss roll-off deal that I had done
 00092:01 a cross check on and I guess -- I sent the cross
 02 check to John McCafferty and evidently, according
 03 to Jeff, he must have been pretty upset about it
 04 or excited about that cross check.

05 Q. Was this a customer that Mr. Yeager
06 was trying to sell?
07 A. Yes.
08 Q. Was it outside his territory?
09 A. Yes.

42. PAGE 92:21 TO 93:20 (RUNNING 00:01:06.700)

21 Q. Mr. Lusty, let's switch to a
22 different subject.
23 Have you ever spoken with
24 Mr. Yelles about the costs that Mr. Yeager would
00093:01 incur in defending the termination case against
02 him?
03 MR. HEEP: I am sorry. Has he ever talked
04 with Mr. Yelles about the cost that Mack would
05 incur?
06 MR. MACK: No, Mr. Yeager would incur.
07 MR. HEEP: Okay.
08 BY THE WITNESS:
09 A. Not in dollars and cents.
10 BY MR. MACK:
11 Q. But just that general subject?
12 A. There was a statement along the way
13 somewhere that was made. I don't know if it was
14 removed.
15 Q. What do you recall about that
16 statement?
17 A. Something about that we are going to
18 file a suit and stir the pot and it'll cost him
19 some money, something like that. I don't recall
20 the total statement.

43. PAGE 94:01 TO 95:06 (RUNNING 00:01:29.500)

00094:01 Q. Are these some more notes you took
02 regarding a conversation pertaining to Toledo
03 Mack?
04 A. Yes.
05 Q. Who is B.S.?
06 A. Barry Smith.
07 Q. Who does Barry Smith work for?
08 A. Barry Smith is a district manager in
09 the eastern region of Mack Trucks.
10 Q. There is a reference there to Mike
11 McNally.
12 Is Mike McNally a regional
13 vice president for the eastern region?
14 A. Yeah, that's correct.
15 Q. I see three times there, a reference
16 to writing. You see that?
17 A. Yes.
18 Q. What did Mr. Smith say to you about
19 writing?
20 A. I asked Barry to send me an e-mail
21 with response -- I asked him to send me a
22 response to a cross check for the discount to
23 Pitt, Ohio Express out of Pittsburgh.
24 Q. Is that a deal Mr. Yeager was
00095:01 attempting to get?
02 A. Yes.
03 Q. What did Mr. Smith tell you?
04 A. He told me he didn't want to send me

05 an e-mail. He was told Mike McNally not to put
06 anything in writing.

44. PAGE 95:07 TO 95:13 (RUNNING 00:00:15.300)

07 Q. He verbally told you the discount,
08 but he wouldn't put it in writing; is that right?
09 A. Eventually we got it on a sales
10 assistance approval that came back, but yeah,
11 that in the process.
12 Q. He said Mike McNally told him that?
13 A. Yes.

45. PAGE 95:14 TO 96:24 (RUNNING 00:02:38.300)

14 Q. If you turn forward to Page -- to
15 August 2002, Page M0164545?
16 A. 164 -- what was the last one?
17 Q. 545.
18 It says August 2002 in the top
19 right.
20 A. Okay.
21 Q. Top right-hand column.
22 Were you in a meeting with
23 Mr. Barletta and Mr. Yelles when the subject of
24 this litigation came up?
00096:01 A. Yes.
02 Q. Was that meeting in August 2002?
03 A. Yes.
04 Q. Do you remember where that meeting
05 was?
06 A. Yes. That was at the McGraw
07 Wildlife Foundation. I think it's in Dundee,
08 Illinois.
09 Q. Who brought up the subject of the
10 lawsuit?
11 A. Dave Barletta.
12 Q. What did Mr. Barletta tell
13 Mr. Yelles about the lawsuit?
14 A. He told Jeff that the feds have nice
15 prisons. You will be going to jail.
16 Q. Have you discussed with Mr. Barletta
17 the issue of whether or not the Mack sales
18 assistance system is corrupt?
19 A. I had a phone call from Dave
20 Barletta regarding a specific deal when he made
21 that statement something similar to that.
22 Q. You used the word, "corrupt" or
23 something like?
24 A. Yes.

46. PAGE 99:08 TO 101:10 (RUNNING 00:02:13.300)

08 Q. Further down at that same meeting,
09 did you have a conversation with Mr. Yelles where
10 you told him that you had spoken to three
11 attorneys? The same box, down at the bottom?
12 A. Yes.
13 Q. That was at McGraw?
14 A. That was on a phone conversation.
15 Q. What three attorneys have you spoken
16 with?
17 A. To -- by name?
18 Q. Yes?

19 A. Thayer Dolan, who is our corporate
 20 attorney, to Jeremy and to Barak Bassman.
 21 Q. I don't want to ask you what was
 22 said between you and the lawyers, but where was
 23 the meeting?
 24 A. It was a telephone conversation.
 00100:01 Q. In August of 2002?
 02 A. Yes.
 03 Q. The conversation related to the
 04 Toledo lawsuit?
 05 A. Yes.
 06 Q. You were reporting that back to
 07 Mr. Yelles.
 08 What did Mr. Yelles say to you
 09 about that?
 10 MR. HEEP: Let me just interject.
 11 I am going to let him answer
 12 the question, and I just want to make clear that
 13 we are not waiving privilege for you to go
 14 further into this. Let's see what he says.
 15 BY MR. MACK:
 16 Q. Do you need the question repeated?
 17 A. Yes. Would you ask that again?
 18 Q. Yes, sure. You told Mr. Yelles that
 19 you had spoken to three distinguished
 20 attorneys -- are my words -- attorneys.
 21 What did Mr. Yelles say to
 22 you?
 23 A. He said -- Jeff said he did, too.
 24 They just want to make sure our stories are
 00101:01 straight or the same. I am sorry -- the same.
 02 Q. That's what you wrote down here in
 03 your diary?
 04 A. Yes.
 05 Q. Why did you decide to write that
 06 down?
 07 A. That was a conscious decision. That
 08 was -- I just felt that there was a message
 09 within a message there, that's all. I was not
 10 comfortable with that statement.

47. PAGE 101:19 TO 103:06 (RUNNING 00:01:42.900)

19 Q. Back to Exhibit 1, I want to talk to
 20 you about the subject of special deals for
 21 certain dealers, okay?
 22 Have you seen, in your
 23 experience as a district manager, Mr. Lusty,
 24 situations where there were special deals for
 00102:01 certain dealers that weren't available to other
 02 dealers?
 03 MR. HEEP: Objection; vague.
 04 BY THE WITNESS:
 05 A. Through the years I have.
 06 BY MR. MACK:
 07 Q. Do you recall, sir, having a
 08 discussion with someone by the name of Cal Mock
 09 about that subject?
 10 A. Yes.
 11 Q. Who is Cal Mock?
 12 A. Cal Mock is in sales billing.
 13 Q. For Mack?

14 A. Yes.
 15 Q. What is his position in sales
 16 billing?
 17 A. I don't know if they call them
 18 managers or whatever.
 19 Q. What office is he in?
 20 A. World headquarters is in Allentown.
 21 Q. What interaction would you have, if
 22 any, with Mr. Mock?
 23 A. If I had to verify -- if a dealer
 24 had a problem with an invoice they may have
 00103:01 received or they didn't get the appropriate
 02 discount or it was billed at the wrong price code
 03 or something, we would research that it
 04 ultimately would end up back in sales billing.
 05 They would reserve that for us. They do the
 06 invoicing there.

48. PAGE 103:17 TO 104:12 (RUNNING 00:01:00.300)

17 Q. Are these some notes, sir, of a
 18 conversation you had with Mr. Mock in March 20,
 19 of 2001?
 20 A. Yes.
 21 Q. What did Mr. Mock tell you about the
 22 Mack sales assistance system?
 23 A. Well, the first part, he was
 24 answering a question that I had when we did a
 00104:01 maintenance on a deal.
 02 Q. What is a maintenance?
 03 A. Well, in other words, if a deal is
 04 done and there was a discrepancy, whether it's a
 05 price code or a discount or whatever, once that
 06 truck's retail delivered notice -- that's what an
 07 RDN is -- there is no way of getting that
 08 information to Allentown to sales billing so that
 09 the dealer gets the proper credit. And evidently
 10 I don't do that much. I really forgot what the
 11 procedure was, and that's what precipitated the
 12 phone call to him.

49. PAGE 104:13 TO 104:24 (RUNNING 00:00:34.100)

13 Q. What did he tell you about sales
 14 assistance?
 15 A. Well, he sounded a little irritated
 16 because there was -- I don't know what the deal
 17 was or the money was involved here.
 18 But he went on to say that
 19 Mack Trucks gives away millions of dollars in
 20 sales assistance and French auditors were in and
 21 they were astonished and said that they would
 22 look into it and look at it. And they said that
 23 the same dealer seemed to abuse the system. And
 24 others all get more dollars.

50. PAGE 105:01 TO 105:21 (RUNNING 00:00:37.500)

00105:01 Q. The French auditors were Mack's
 02 auditors?
 03 A. Renault owned us, maybe at that
 04 time. I can't think -- maybe at that time they
 05 owned us. That's who would come in and audit the
 06 company.

07 Q. Mr. Mock told you that some dealers
08 abused the system and he identified Chicago Mack;
09 correct?
10 A. That's correct.
11 Q. Did you identify -- what's the other
12 dealer you have listed there?
13 A. Central Indy.
14 Q. Is that the Shelby Howard
15 dealership?
16 A. Yes.
17 Q. He specifically identified those as
18 being dealers that get more money?
19 A. That was the conversation.
20 Q. Is that what he said?
21 A. Yes.

51. PAGE 106:02 TO 108:03 (RUNNING 00:01:56.100)

02 Did you have a conversation on
03 June the 7th of 2001 with Mr. Yelles,
04 Mr. McCafferty and Mr. Barletta? Right down
05 here, sir.
06 A. Yes.
07 Q. Mr. Yelles was speaking here I
08 assume? That was a statement that was made at
09 the meeting.
10 During that meeting,
11 Mr. Yelles referenced special side deals?
12 A. Yes.
13 Q. He used those words?
14 A. Yes.
15 Q. He said there was a master list of
16 free floor plan units that couldn't be
17 released -- that Mr. Polzer wouldn't release
18 because of all special side deals?
19 MR. HEEP: Objection to form.
20 BY MR. MACK:
21 Q. Is that right?
22 A. Yes.
23 Q. Do you know what he was referring to
24 there by the master list of free floor plan
00107:01 units?
02 A. Yes.
03 Q. What was he referring to?
04 A. I had raised a question.
05 We had free floor plan units,
06 and naturally that has an impact on the company's
07 bottom line.
08 I had asked the question, why
09 don't -- if, a concern, because we were all
10 getting beat up pretty good about getting these
11 free floor plan units, off dealers free floor
12 plan and getting them retailed and cut the cost
13 to the company.
14 I had made a suggestion at
15 that meeting that if that's the case, then why
16 don't you give us a list of the free floor plan
17 units rather than have us search for all these
18 things, and let's make it easy. We can get to
19 the bottom of this and cut the cost and move on.
20 And that was the response to that question.
21 Q. That he couldn't give you that list

22 because of all the special side deals?
23 A. Yes.
24 Q. You took that to mean special side
00108:01 deals with dealers that had the free floor plan
02 units?
03 A. Yes.

52. PAGE 108:04 TO 108:09 (RUNNING 00:00:11.600)

04 Q. How would releasing the free
05 floor -- the list of the free floor plan units
06 or -- strike that.
07 What was the relationship
08 between releasing the list of the free floor plan
09 units and these side deals?

53. PAGE 108:12 TO 108:13 (RUNNING 00:00:06.200)

12 A. It may identify who had trucks on
13 free floor plan or special side deals.

54. PAGE 108:20 TO 108:23 (RUNNING 00:00:09.300)

20 Did you view this as an
21 attempt to prevent other dealers from finding out
22 what side deals were in place for dealers that
23 had free floor plan units?

55. PAGE 109:02 TO 109:02 (RUNNING 00:00:04.000)

02 A. I would have to think, yes.

56. PAGE 109:03 TO 109:11 (RUNNING 00:00:13.200)

03 BY MR. MACK:
04 Q. You thought it was a good idea to
05 get that list out there?
06 MR. HEEP: Objection; asked and answered.
07 MR. MACK: You can answer.
08 BY THE WITNESS:
09 A. I thought it would be an effective
10 tool to reduce the floor plan expense to the
11 company.

57. PAGE 109:13 TO 111:14 (RUNNING 00:02:28.100)

13 Q. This subject -- turn the page and
14 let me ask you. Page M0164582, June the 27th,
15 the note at the bottom.
16 Is this a conversation between
17 you and -- does this refer to a conversation
18 between you and Mr. Yelles?
19 A. Yes.
20 Q. Does this also relate to Toledo
21 Mack?
22 A. Yes.
23 Q. What was this conversation about?
24 A. That was a group of trucks that we
00110:01 had that was a cancellation because of some
02 financial arrangements that didn't pan out
03 through a finance company. There 30 or 35 units
04 total. So we made space at the factory to build
05 these trucks, and then the deal fell through.
06 It was sort of my personal
07 responsibility to move these units to some other
08 dealers.
09 The original deal was, I

10 believe, five plus 13, for a total of 18. And I
 11 was going to -- I was able to offer those trucks
 12 to my dealers at that discount with 90 days free
 13 floor plan if they sold those units in their own
 14 AOR. So I canvassed my dealers. I sold a few of
 15 them. I know that R.W. Sidley bought a couple of
 16 them. I can't remember the other dealer.

17 I phoned Toledo Mack, and Dave
 18 thought that was a good deal and agreed with the
 19 floor plan terms and he committed to me the five
 20 units. So I called Jeff and told him that we
 21 were down to the last five or eight units,
 22 whatever it was. And that must have been the
 23 last five. But Jeff told me at that time he just
 24 sold them, they were all sold. The trucks

00111:01 weren't available to me.

02 Q. So Mr. Yeager wasn't able to get
 03 those free floor plan units?

04 A. That's correct.

05 Q. Now the deal was that if a dealer
 06 wanted to get the free floor plan units, he had
 07 to sell the trucks in his own AOR?

08 A. That's correct.

09 Q. He couldn't sell them -- if a dealer
 10 wanted to get those units and sell them outside
 11 his area of responsibility, he would not receive
 12 a free floor plan?

13 A. That was my understanding. That's
 14 what Jeff Yelles told me.

58. PAGE 111:22 TO 113:14 (RUNNING 00:01:42.200)

22 Q. Yes, sir. Is this a conversation
 23 you had with Mr. Yelles?

24 A. Yes.

00112:01 Q. Regarding Mr. Yeager?

02 A. Yes.

03 Q. Could you tell us what this was
 04 about?

05 A. Yes. At that time Jeff was telling
 06 me -- I was having evidently, if I recall on my
 07 cross checks. I was not getting a response on
 08 cross checks. So Jeff told me, moving forward,
 09 evidently, we had resolved an issue, and he told
 10 me that moving forward, I need to call the DMs,
 11 that this is not acceptable, Yeager has a
 12 legitimate complaint, if we are not getting back
 13 to him in time and I should have followed up with
 14 my call even with the e-mails that I sent.

15 Q. Does Mack have a general policy that
 16 cross checks are supposed to be responded to
 17 within 24 hours?

18 MR. HEEP: Objection to form.

19 BY THE WITNESS:

20 A. That was a regional policy more than
 21 corporate policy.

22 BY MR. MACK:

23 Q. Fair enough.

24 Was that a policy for the
 00113:01 central region?

02 A. Yes.

03 Q. You were submitting cross checks for

04 Mr. Yeager that weren't being responded to in,
05 what you viewed, as a timely fashion; is that
06 right?

07 A. Yes. That's correct.

08 Q. This was in -- strike that.

09 You raised this issue with
10 Mr. Yelles; right?

11 A. Correct.

12 Q. Now, this happened on a number of
13 occasions?

14 A. Yes.

59. PAGE 113:15 TO 113:17 (RUNNING 00:00:08.800)

15 Q. What is the effect on a dealer, the
16 general effect on a dealer if there is a delay
17 in
18 processing the cross check?

60. PAGE 113:20 TO 114:15 (RUNNING 00:00:51.500)

20 Q. Is there an effect on a dealer if
21 there is a delay in processing a cross check?

22 A. Yes.

23 Q. What is it?

24 A. I can simplify that and I have
00114:01 always used this term in explaining that to
02 anybody in sales, new salesmen following up with
03 customer. The best time to sell something is
04 when somebody wants to buy. So an immediate
05 response is always the best response because you
06 are back to them when they are in the buying
07 mode. A delay in establishing discounts or
08 transmitting discounts or forwarding discounts
09 can lead possibly to a lost sale.

10 Q. Until the cross check is complete,
11 you can't establish the discount at Mack; right?

12 A. That's correct.

13 Q. If Mr. Yeager doesn't know the
14 discount, it is difficult for him to quote a
15 price to a customer; right?

61. PAGE 114:18 TO 114:18 (RUNNING 00:00:01.000)

18 Q. Is it difficult?

62. PAGE 114:22 TO 114:22 (RUNNING 00:00:01.500)

22 A. Yes.

63. PAGE 114:23 TO 115:10 (RUNNING 00:00:30.200)

23 BY MR. MACK:

24 Q. You were raising this issue with
00115:01 Mr. Yelles, and Mr. Yelles told you that Yeager
02 had a legitimate complaint; is that right?

03 A. Yes.

04 MR. HEEP: Objection to the suggestion
05 that this is anything more than a
06 characterization of one deal, one time.

07 BY MR. MACK:

08 Q. Were you raising with Mr. Yelles the
09 fact that this happened on a number of occasions?

10 A. Yes.

64. PAGE 115:11 TO 115:17 (RUNNING 00:00:18.000)

11 Q. What did Mr. Yelles say?
 12 A. Depending on the situation the
 13 response may have been different.
 14 Q. What did he say to you in this call?
 15 A. That I need to follow up with a
 16 phone call to these DMS, even with the e-mails
 17 that I have sent.

65. PAGE 123:02 TO 123:13 (RUNNING 00:00:33.800)

02 Q. Do you have any recollection, sir,
 03 of specifically discussing the free floor plan or
 04 Two-for-One deal with Mr. Yeager?
 05 A. At one time, I discussed that with
 06 all of my dealers with a phone call to them.
 07 This was an unwritten program. So we had to
 08 verbally communicate that and it was via phone.
 09 Q. Do you have specific recollection of
 10 calling either Mr. Yeager or someone at Toledo
 11 Mack to say that, to them?
 12 A. I think I did, but I can't give you
 13 a date that I did, but I think I did.

66. PAGE 125:23 TO 128:19 (RUNNING 00:02:46.000)

23 Q. Is this note another conversation
 24 between you and Mr. Yelles?
 00126:01 A. Yes.
 02 Q. This relates, does it not, to the
 03 Pittsburgh, Ohio deal?
 04 A. Pit, Ohio express, yes.
 05 Q. Mr. Yelles was telling you that --
 06 strike that.
 07 You told Mr. Yelles that
 08 Mr. Yeager was concerned he wasn't equalized on
 09 that deal?
 10 A. Yes.
 11 Q. Then down at the bottom, you wrote,
 12 Pit, Ohio, Yeager knows, and correct me if I am
 13 reading this wrong, difference in list price
 14 equals difference in price level?
 15 A. That's correct.
 16 Q. What does that refer to?
 17 A. Well, if there is an older price
 18 level, the list price and it competes to the net
 19 price, is different then -- and I will make this
 20 up. If they were using an '03 D price level and
 21 '04 A or B come out, there may have been a price
 22 increase. So a dealer may be quoting an existing
 23 customer that purchased last year then they got
 24 an extension on a price code, which allowed them
 00127:01 to continue the old price to that customer along
 02 with the discount.
 03 Q. Even if the dealers were given the
 04 same percent in that situation, even if the
 05 dealers were given the same percentage discount.
 06 Let's say, they were both given 15 percent off,
 07 there would be the net difference in price;
 08 right?
 09 A. There could be.
 10 Q. The dealer quoting off the old,
 11 lower price list would be in a better position

12 even though, theoretically they got the same
13 discount, is that right?

14 A. That could be.

15 Q. Is that the concern Mr. Yeager was
16 raising here?

17 A. I think that was part of it.

18 Q. What else is part of it?

19 A. Yes.

20 MR. HEEP: Objection to foundation. Go
21 ahead.

22 BY THE WITNESS:

23 A. It was questionable when this deal
24 had started and Toledo Mack had come in for sales
00128:01 assistance whether they were equalized from the
02 get go on this deal.

03 BY MR. MACK:

04 Q. Do you have reservations about the
05 way this Toledo Mack sales assistance request on
06 this deal was handled?

07 MR. HEEP: Objection to form and
08 foundation.

09 BY THE WITNESS:

10 A. Yes.

11 BY MR. MACK:

12 Q. What are those reservations, sir?

13 A. I was also concerned that he may not
14 have been getting the discounts at the time we
15 needed the discount, meaning Toledo Mack, and the
16 fact when I talked to Barry Smith, I was not able
17 to get anything in writing from him. That was a
18 concern of mine, only because I have to answer to
19 my dealer.

67. PAGE 129:02 TO 130:09 (RUNNING 00:01:23.200)

02 Is this a fax that Mr. Yeager
03 sent to you this October of 2002?

04 A. Yes.

05 Q. Mr. Yeager states that response to
06 request for sales assistance have been slow in
07 coming and he cites a Kann Manufacturing deal and
08 Beelman deal?

09 A. Yes.

10 Q. Were Mr. Yeager's requests for sales
11 assistance on the Kann Manufacturing deal
12 delayed?

13 MR. HEEP: Objection to foundation and
14 form.

15 BY THE WITNESS:

16 A. Yes.

17 BY MR. MACK:

18 Q. And he says 12 days as of October
19 23, 2002; is that right?

20 MR. HEEP: Same objection.

21 BY THE WITNESS:

22 A. I would have to assume that.

23 BY MR. MACK:

24 Q. When you got this e-mail, did you
00130:01 write back to him and say -- when you got this
02 fax, did you write back to Mr. Yeager and say,
03 you know, you are wrong?

04 A. No. That's correct.

05 Q. Kann and Beelman were out there as
06 of October 23, 2002 out there. I mean, sales
07 assistance hasn't been approved yet; right, for
08 Mr. Yeager?

09 A. That's right.

68. PAGE 130:11 TO 130:20 (RUNNING 00:00:25.800)

11 BY MR. MACK:

12 Q. You said Beelman was 15 days and
13 asked you to look into why it was taking so long
14 or what is taking so long?

15 A. Yes.

16 Q. Did you do that?

17 A. I believe I did.

18 Q. And did you ever get a satisfactory
19 explanation for why Mr. Yeager's request on Kann
20 Manufacturing and Beelman were delayed?

69. PAGE 130:24 TO 131:15 (RUNNING 00:00:34.800)

24 A. Yes.

00131:01 BY MR. MACK:

02 Q. What did you learn?

03 A. That Kann Manufacturing, for lack of
04 a better word, is being debated whether they get
05 a discount or they didn't get a discount and
06 because they were a Body Builder.

07 In fact, after a number of
08 days I guess, 12 days, it was determined that one
09 of the district managers did give them the
10 discount.

11 And, I, in turn received a
12 discount and forwarded that and processed the
13 sales assistance request. That's why the delay
14 in that. If that's the specific deal that we
15 were talking about and I believe it is.

70. PAGE 132:15 TO 133:12 (RUNNING 00:00:51.500)

15 Q. Is this an e-mail that was sent to
16 you by Mr. McCafferty?

17 A. Yes.

18 Q. Did you write on the right side,
19 "Parrish?"

20 A. Yes.

21 Q. Does this relate to Parrish Leasing?

22 A. Yes.

23 Q. Was Mr. Yeager attempting to sell to
24 Parrish Leasing?

00133:01 A. Yes.

02 Q. Was the sales assistance request on
03 Parrish Leasing delayed?

04 A. Yes.

05 MR. HEEP: Objection to form.

06 BY MR. MACK:

07 Q. Did you look into that issue?

08 A. Yes.

09 Q. Mr. McCafferty says sales assistance
10 had been pending with Steve Polzner for three
11 days?

12 A. That's correct.

71. PAGE 134:05 TO 135:08 (RUNNING 00:01:17.400)

05 Q. Let's put this to the side and let
06 me ask you about sales assistance for Mr. Yeager
07 on a deal for Parrish Leasing being delayed over
08 a weekend. What do you recall that?

09 A. Yes, sir.

10 Q. What happened next?

11 A. Toledo Mack had come in for sales
12 assistance on Parrish Leasing.

13 I did a cross check with John
14 McCafferty, and it got volleyed back between John
15 and Jeff. And then Jeff said to call Steve,
16 meaning Steve Polzer, and this went on for well
17 over a week and then after trying to get the
18 discount, I finally, I left Jeff a voice mail and
19 he told me that he was on vacation, that I needed
20 to call Steve Polzer.

21 I said, fine. So I sent Steve
22 an e-mail and then I followed up with a phone
23 call to Steve and Steve Polzer told me that he
24 had -- I remember him answering the phone. It

00135:01 was, "Yes, Jack."

02 He said that he had spoken to
03 Jeff Yelles earlier that morning and Jeff told
04 him not to give me the discount until Monday
05 because the other dealer was going to go in and
06 close the deal on Saturday.

07 Q. That's what Mr. Polzer told you?

08 A. Yes.

72. PAGE 135:21 TO 139:20 (RUNNING 00:04:58.500)

21 Let me ask you, do you recall,
22 sir, attending a meeting with a -- dealer meeting
23 at which Mr. Flaherty spoke about the Network
24 2000 program to the dealers?

00136:01 A. Yes.

02 Q. During the course of that meeting,
03 did Mr. Flaherty discuss the issue of
04 consolidation of the dealerships?

05 A. Yes.

06 Q. Did he say to the dealers, look
07 around the room; words to that effect?

08 A. Yes.

09 Q. What do you recall about that?

10 A. Well, it's not a quote, but in
11 generalities, I think when he made the statement
12 he said, look around the room and I don't know if
13 he said next year or in the very new future, some
14 of you won't be here. He quantified that.

15 Q. He quantified it, didn't he?

16 A. Yes, he did and I am not sure
17 what -- I forget that.

18 Q. Now, did you also, sir, attend a
19 dinner with the then president of Mack, Michele
20 Gigou, G-i-g-o-u?

21 A. Gigou.

22 Q. At which the subject of Mr. -- of
23 Toledo Mack came up?

24 A. Yes.

00137:01 Q. When was that?

02 A. I know where it was and it was

03 during the Network 2000. It was in Allentown,
 04 and I believe it was the Brookside Country Club.
 05 It was a round-table meeting.

06 Q. What is a round-table meeting?

07 A. It's where we get together and we
 08 sort of brainstorm and talk about the industry
 09 and there is some presentations by the
 10 engineering group and product development and
 11 that kind of stuff.

12 Q. Mr. Gigou, at the time, was the
 13 Frenchman who was the president of Mack; right?

14 A. That's correct.

15 Q. You happened to be seated at his
 16 table?

17 A. Yes.

18 Q. Did Mr. Gigou, say during that
 19 dinner that, to you, that Network 2000 will take
 20 care of Toledo Mack?

21 A. No.

22 Q. What did he say?

23 A. There was a number of conversations,
 24 but maybe we can push him a little.

00138:01 Q. Was he talking about getting
 02 Mr. Yeager out of the system?

03 A. Yes.

04 MR. HEEP: Objection to foundation.

05 BY MR. MACK:

06 Q. Did another person at the table say
 07 Network 2002 will take care of Toledo Mack?

08 A. Yes.

09 Q. A Mr. Riordan?

10 A. Yes.

11 Q. Mr. Riordan worked for Mack; is that
 12 right?

13 A. That's correct.

14 Q. He was involved in dealer
 15 development?

16 A. Yes.

17 Q. Dealer development was the group
 18 that was handling Network 2000?

19 A. Yes.

20 Q. What did he say?

21 A. He had brought up about dealer
 22 performance and made mention of Toledo Mack and I
 23 can't remember whether they had delivered zero or
 24 one trucks, year to date. And I was a little

00139:01 embarrassed that that was happening. I am
 02 sitting with the president of the company and he
 03 brought that up.

04 And I remember sort of
 05 apologizing and telling him that I was doing my
 06 best and I would continue to pursue business
 07 through Toledo Mack and he had made the statement
 08 that Network 2000 will take care of him.

09 Q. That was Mr. Riordan?

10 A. Yes.

11 Q. And then after that, Mr. Gigou said
 12 well, maybe we can push him a little bit?

13 A. He made the comment, maybe we can
 14 push him a little.

15 Q. How did you react to that comment?

16 A. I guess I was shocked to hear that.

17 Q. You were trying to do everything you
18 could to help Mr. Yeager develop his business;
19 right?
20 A. I think I was.

73. PAGE 140:09 TO 140:15 (RUNNING 00:00:16.200)

09 Q. You were doing everything you could
10 to help Mr. Yeager and here was the president of
11 the company saying maybe we could push him a
12 little bit; right?
13 A. Yes.
14 Q. And push him, did you understand
15 that to mean push him out of the company?

74. PAGE 140:19 TO 140:24 (RUNNING 00:00:07.100)

19 A. That was a response to the comment
20 made from Mike Riordan.
21 BY MR. MACK:
22 Q. Which was Network 2000 taking care
23 of that?
24 A. It will take care of that.

75. PAGE 141:01 TO 141:03 (RUNNING 00:00:04.700)

00141:01 Q. That would be Network 2000 was the
02 consultation program?
03 A. That's correct.

76. PAGE 141:16 TO 142:10 (RUNNING 00:00:57.700)

16 Q. Now, these are notes of a
17 conversation between whom and whom?
18 A. Well, this was between Bob McCoskey,
19 who was our regional business development manager
20 and me.
21 Q. In March of 2001?
22 A. That's correct.
23 Q. Business development manager, was
24 that part of Network 2000?
00142:01 A. That's something that we have had
02 for a long time, business development managers.
03 Regional business -- they were called regional
04 business managers. Then they became business
05 development managers.
06 Q. What do they do?
07 A. They visit the others and they will
08 go in and do a total business analysis,
09 department by department for dealers and guide
10 them in how to improve business processes.

77. PAGE 143:10 TO 143:15 (RUNNING 00:00:20.000)

10 Q. Was Mr. Gerhardt part of Network
11 2000?
12 A. The regional business manager slash
13 the business development managers were
14 transitioning into that time when Network 2000
15 was in play.

78. PAGE 143:16 TO 143:23 (RUNNING 00:00:32.600)

16 Q. During this conversation, did
17 Mr. McCoskey report to you that Mr. Gerhardt
18 wanted to get rid of Toledo Mack?
19 A. Yes.

20 Q. Specifically identified Toledo Mack
 21 as one of the several stores or several dealers
 22 that Gerhardt wanted to get rid of; right?
 23 A. One of several.

79. PAGE 143:24 TO 144:22 (RUNNING 00:01:07.500)

24 Q. You flip ahead to the next page,
 00144:01 April 17th, we are now about a month later and on
 02 the right-hand side of the document, you had --
 03 on April 16, excuse me.
 04 Did Mr. Yelles say to you, in
 05 reference to Mr. Yeager, that guy has to go?
 06 MR. HEEP: Where are you in the document?
 07 MR. MACK: On the right-hand side. Got
 08 it?
 09 MR. HEEP: The question is whether Jeff
 10 said on 4, that guy has to go, 16, that guy has
 11 to go? Okay.
 12 BY THE WITNESS:
 13 A. That's correct.
 14 BY MR. MACK:
 15 Q. That was a conversation about
 16 Mr. Yeager; right?
 17 A. Yes, sir.
 18 Q. Did you say to Mr. Yelles that
 19 Mr. Yeager was not for sale?
 20 A. Yes.
 21 Q. How did Mr. Yelles respond?
 22 A. "Fuck him. He's got to go."

80. PAGE 144:23 TO 147:06 (RUNNING 00:02:46.400)

23 Q. Now, if you turn to Page -- 3 days
 24 later on April 19th, down at the bottom do you
 00145:01 see an entry for April 24th and right above
 02 that's an entry for April 19th.
 03 A. Yes.
 04 Q. Says Yelles, this guy has to go?
 05 A. Yes.
 06 Q. Is that another comment that
 07 Mr. Yelles made to you about Mr. Yeager on April
 08 19th?
 09 A. Yes.
 10 Q. 2001?
 11 A. That's correct.
 12 Q. Did he also tell you that you needed
 13 to turn up the heat on the dealers?
 14 A. Yes.
 15 Q. He said -- did he say, make the
 16 dealers call Allentown. They will be told by
 17 senior management?
 18 A. That's what he said.
 19 Q. And then down at the bottom of the
 20 document, what do you recall that he said to you
 21 about putting things in writing?
 22 MR. HEEP: Do you want to --
 23 MR. MACK: Let me rephrase it.
 24 MR. HEEP: Okay.
 00146:01 BY MR. MACK:
 02 Q. Did Mr. Yelles say anything to you
 03 about whether or not you should put any -- what
 04 you could put in writing?

05 MR. HEEP: I just want to clarify you
06 moved to a different date.

07 MR. MACK: Yes. Thank you. 4/25.

08 BY THE WITNESS:

09 A. Oh, okay on 4/25. I was confused
10 there 4/25. I phoned Dave Yeager and explained
11 the conversation with Jeff Yelles of 4/19? And I
12 evidently turned up the heat.

13 I informed Dave Yeager that
14 this has got to stop per Jeff Yelles and that's
15 the advertising and calling Mack customers. And
16 Dave Yeager told me that he will respond with a
17 letter. And Jeff Yelles told me, don't put
18 anything in writing, but keep the heat on. Okay
19 to write about dealer performance.

20 BY MR. MACK:

21 Q. What did you understand Mr. Yelles
22 to be telling you about what you could put in
23 writing and what you shouldn't put in writing?

24 A. That it was okay to write about the
00147:01 dealers' poor performance and but not anything
02 else.

03 Q. You shouldn't be writing about
04 Mr. Yeager's advertising and calling Mack
05 customers?

06 A. That's correct.

81. PAGE 147:18 TO 148:21 (RUNNING 00:01:15.200)

18 Q. Do you recognize this document, sir?

19 A. Yes.

20 Q. Does this relate to an attempt by
21 Toledo Mack to sell trucks at Beelman Truck
22 Company?

23 A. Yes.

24 Q. Had Mr. Yeager requested parity with
00148:01 established discount structure for the customer?

02 A. Yes.

03 Q. You had submitted to whom, the
04 request?

05 A. I had sent it to Jeff Yelles, and
06 Jeff told me to call Steve Polzer. I called
07 Steve Polzer and that's in my comments. I said
08 see above, Jeff. I talk to Steve and he said it
09 was okay to pull it.

10 Q. Then down at the bottom, there is
11 some notes. Did you have a conversation with
12 Mr. Polzer?

13 A. Yes.

14 Q. Did Mr. Polzer bring up this
15 requirement of Mr. Yeager having a letter from
16 the customer you were just talking about?

17 A. Yes.

18 Q. What did Mr. Polzer say?

19 A. He said, did he have a letter from
20 the customer. I guess that's the restriction we
21 are putting on him when he is out of his box.

82. PAGE 148:22 TO 149:19 (RUNNING 00:01:01.600)

22 Q. Now, did Mr. Yeager attempt to sell
23 Kimball Mixer?

24 A. Yes.

00149:01 Q. Was he requested to get a letter on
02 that deal?
03 A. Yes.
04 Q. Did he, indeed, come up with a
05 letter on Kimball Mixer?
06 A. Yes.
07 Q. Did you see that letter?
08 A. Yes, I think I did.
09 Q. Was it forwarded on to Mr. Yelles?
10 A. I think it was forwarded to John
11 McCafferty and then maybe to Mr. Yelles. I am
12 not sure of the sequence there, but both of them
13 saw it.
14 Q. The letter was not acceptable to
15 Mr. McCafferty, was it?
16 A. That's correct.
17 Q. And Mr. Yeager wasn't able to get
18 the discount to quote that customer, was he?
19 A. That's correct.

83. PAGE 152:13 TO 152:15 (RUNNING 00:00:09.300)

13 Q. Mr. Lusty, if Mr. Yeager would have
14 received more sales assistance from Mack, would
15 he have been able to sell more trucks?

84. PAGE 152:20 TO 152:20 (RUNNING 00:00:02.000)

20 A. It's a real possibility, yes.

85. PAGE 153:07 TO 154:09 (RUNNING 00:00:53.300)

07 Q. One of the things that you do in
08 setting up the business plan for the company is
09 trying to determine how many trucks the dealer
10 can reasonably sell under the current market
11 conditions including competition, including
12 pricing, things like that; right?
13 A. Yes.
14 Q. Based on your years with the company
15 and your experience as a district manager, you
16 have a pretty good feel, don't you, for what
17 factors go into whether or not a dealer is going
18 to be successful in selling a truck?
19 A. Yes.
20 Q. One of those factors is sales
21 assistance; right?
22 A. Right.
23 Q. If a dealer gets more sales
24 assistance, doesn't that help him sell more
00154:01 trucks?

02 MR. HEEP: Objection to form.

03 BY THE WITNESS:

04 A. If that sales assistance is passed
05 onto the end user, to the customer, yes.

06 BY MR. MACK:

07 Q. Mr. Yeager has always been a low
08 cost pricer; right?

09 A. Correct.

86. PAGE 154:20 TO 155:15 (RUNNING 00:00:39.100)

20 Q. Now, if free floor plan -- what
21 benefit is that to a dealer?
22 A. That ultimately lowers -- it affects

23 the bottom line of the dealership. It can if you
 24 apply that to each individual truck, you can
 00155:01 lower the cost of the truck. There is no
 02 carrying charge on that truck.

03 So ultimately, when you sell
 04 the truck, you don't have to add your floor plan
 05 charges incurred to the selling price of the
 06 truck to the end user.

07 Q. So theoretically, you could sell
 08 that truck if you wanted to at a lower cost?

09 MR. HEEP: Objection to form.

10 BY THE WITNESS:

11 A. That's possible, yes.

12 BY MR. MACK:

13 Q. The other possibility is the dealer
 14 could put that money in his pocket; right?

15 A. Yes.

87. PAGE 155:16 TO 155:19 (RUNNING 00:00:12.700)

16 Q. If Mr. Yeager would have received
 17 free floor planning on trucks he purchased from
 18 Mack and passed that on to the customer, would he
 19 have been able to sell more trucks?

88. PAGE 155:23 TO 156:01 (RUNNING 00:00:04.000)

23 A. That would have lowered the selling
 24 cost so it's possible that could have happened,
 00156:01 yes.

89. PAGE 156:15 TO 156:18 (RUNNING 00:00:12.500)

15 Q. If Mack had encouraged rather than
 16 discouraged Mr. Yeager to sell outside of his
 17 AOR, would Mr. Yeager have been able to sell more
 18 trucks?

90. PAGE 156:22 TO 157:02 (RUNNING 00:00:08.200)

22 A. That's possible, yes.

23 BY MR. MACK:

24 Q. Do you think it's reasonably
 00157:01 possible, sir, based on your experience?

02 A. Yes.

91. PAGE 167:06 TO 168:24 (RUNNING 00:02:13.400)

06 Q. Is this an e-mail with your notes
 07 from Mr. Schriffert to you on a deal involving
 08 Bolus Freight System?

09 A. That's correct.

10 Q. Mr. Yeager was trying to quote Bolus
 11 Freight System?

12 A. Yes, sir.

13 Q. You had asked some information from
 14 Mr. Schriffert regarding the number of issues on
 15 the deal; right?

16 A. Yes, sir.

17 Q. What price level the deal was going
 18 offered at; correct?

19 A. Yes, sir.

20 Q. Surcharge warranty; correct?

21 A. I am just looking for the warranty
 22 here. I just want to make sure I am answering
 23 this correctly. Yes.

24 Q. You had some questions about the
00168:01 response you received?
02 A. Yes.
03 Q. What were those questions?
04 A. "Were these units protected under
05 the asset first experience program? My
06 understanding, instruction, the fleet deals over
07 three percent sales assisted did not qualify for
08 the asset highway first experience warranties,
09 per Jeff Yelles. And are you charging or waiving
10 the EPA 02 surcharges." And some of that was
11 answered here.
12 Q. Did you talk to Mr. Yelles about
13 what level of sales assistance you should start
14 giving Mr. Yeager on this account?
15 A. Yes.
16 Q. Did Mr. Yelles tell you to start at
17 two-and-a-half percent?
18 A. Yes.
19 Q. Did he use some profanity when he
20 said that?
21 A. Yes.
22 Q. What did he say?
23 A. "Fuck him. Let him start at
24 two-and-a-half percent."

92. PAGE 169:15 TO 169:21 (RUNNING 00:00:18.600)

15 Q. Did you ever get a satisfactory
16 answer to all the questions you were raising
17 about the -- on this Bolus account?
18 MR. HEEP: Objection to the form of the
19 question.
20 BY THE WITNESS:
21 A. I think I did.

93. PAGE 169:23 TO 170:01 (RUNNING 00:00:06.000)

23 Q. Was Mr. Yeager able to sell to
24 Bolus?
00170:01 A. No.

94. PAGE 170:10 TO 170:12 (RUNNING 00:00:04.900)

10 Q. It took some time for Mr. Yeager to
11 get the discount; right?
12 A. Yes.

95. PAGE 184:11 TO 185:18 (RUNNING 00:01:21.800)

11 Q. Is this a sales assistance request
12 that you put in on behalf of Toledo Mack?
13 A. Yes.
14 Q. Toledo Mack was attempting to thwart
15 capital waste?
16 A. Yes.
17 Q. Is that a body builder?
18 A. No.
19 Q. What -- do they buy vocational
20 trucks?
21 A. Yes.
22 Q. What did you write at the bottom of
23 this document?
24 A. My handwriting there, you mean?
00185:01 Q. Yes, sir.

02 A. "This account is purchased from
03 McClain Weigand Mack is also quoted and has not
04 been successful do to McClain pricing."
05 Q. What did you mean by that?
06 A. Well, I was making a note. I was
07 going to have to talk to Jeff about this deal and
08 explain to him why I was coming with the sales
09 assistance. Capital waste and I know this
10 account personally.
11 He has purchased trucks from
12 some dealers but he also gets prices from the
13 body builders and I know that Weigand Mack has
14 also quoted him and has not been successful in
15 selling this account.
16 Q. Is this an instance where Mack
17 dealers were competing with McClain for the
18 business of capital waste?

96. PAGE 185:21 TO 185:21 (RUNNING 00:00:01.000)

21 A. Yes.

97. PAGE 189:16 TO 190:23 (RUNNING 00:01:32.500)

16 Q. Do you recognize this, sir?
17 A. Yes.
18 Q. October 1st of 2002, sales
19 assistance e-mail sent to Mr. Yelles; is that
20 right?
21 A. Yes.
22 Q. You have some notes written down?
23 A. Yes.
24 Q. One of the issues -- strike that.
00190:01 This deals with three sales
02 assistance requests that you had pending at the
03 time; right?
04 A. Correct.
05 Q. None of those requests had been
06 responded to within 24 hours; right?
07 MR. HEER: The same thing. If you know
08 the answer, you can answer it. If you don't,
09 then don't guess.
10 BY THE WITNESS:
11 A. I can't remember.
12 BY MR. MACK:
13 Q. Well, the first sales assistance
14 request you say coincide with the fax dated 9/25.
15 You say the second one was
16 dated 9/25; right?
17 A. That's correct.
18 Q. Your e-mail is written on October
19 the 1st; right?
20 A. Correct.
21 Q. The third one deals with a sales
22 assistance request on a company called McClain?
23 A. Correct.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 01:41:02.500)